

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1068 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B C PATEL

Versus

JAI HIND STORES

Appearance:

MR PG DESAI for Petitioner

MR HD VASAVADA for Respondent No. 1 to 3

MR AKSHAY H MEHTA for Respondent No. 4

Mr DN Patel, Addl PUBLIC PROSECUTOR for Rest No.5

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 29/08/98

ORAL JUDGEMENT

Original complainant, after obtaining a leave under the provisions contained in Criminal Procedure Code, has preferred this appeal against the order of acquittal recorded by Judicial Magistrate First Class, Vadodara in Criminal Case No.8084/85 wherein the respondents No. 1 to 3 being vendors and accused No.4

being manufacturer who is alleged to have sold the adulterated article of food to accused No.1, were tried for offences punishable under section 7 (iii) read with section 16 (1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act).

2. Briefly stated, the facts leading to the present prosecution, as it emerges from the record, are as under:-

2.1 Original Accused No.1 "Jai Hind Stores" is dealing in food articles which is owned by accused No. 2 and accused No.3 (hereinafter referred to as 'vendor') was visited by the Food Inspector on 28.10.1985 at about 10.45 a.m. Accused No.3 was at the relevant time present at the shop and was found dealing in cosmetic items, Babyfood, juice etc. On demand, accused No.3, on payment of Rs.33/- delivered sealed, packed tins of Lucky Fruit Chutney to the Food Inspector. On the container in which the chutney was packed, label was affixed on which name of the manufacturer was also printed indicating that the same was manufactured by Lucky Canning Company, Athwa Lines, Surat. Not only the name of the manufacturer, but ingredients of the said chutney and the date of manufacturing were also mentioned. It further transpires that in all, three sealed containers were taken and each bottle was separately kept in a brown paper and these three containers were taken as three samples, and after following the procedure laid down under the provisions of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules), one sample was forwarded to the Public Analyst for his analysis and report and two samples were forwarded to Local Health Authority as required under the rules.

2.2 Before the trial Court, an application was submitted by accused No.4 for sending the sample to the Central Food Laboratory, Pune. After following the procedure under the Act and the Rules, more particularly section 13 of the Act, the sample bottle was forwarded to the Central Food Laboratory and on analysis, it forwarded its report vide Exh.8 stating that the sample contained Tartrazine Ponceau 4 R. Thus, for preparation of the Chutney Coltar Dye was used in contravention of Rule 24 of the Rules.

2.3 The trial Court, on appreciation of the evidence, acquitted the accused.

3. Mr. Patel, learned Additional Public Prosecutor

for respondent No.5 State, has read the evidence. From reading the evidence, it clearly transpires that while collecting the samples, the Food Inspector has strictly followed the rules. Mr. Mehta, learned advocate appearing for the original accused was not in a position to show that while taking the samples, the Food Inspector has committed any breach of the Rules from which an inference could be drawn that prejudice is caused to the accused or that the Rule which is mandatory is contravened. Once it is held that the procedure as laid down in the Rules has been followed, then it can safely be said that the Food Inspector has collected the samples in accordance with law. The report of the Central Food Laboratory clearly reveals that the sample analysed was not according to the standard, and, therefore, adulterated. The only conclusion that could, therefore, be drawn is that the food article sold to the Food Inspector was adulterated.

4. In the instant case, the report forwarded by Central Food Laboratory supersedes the report forwarded by the Public Analyst, and, therefore, the report of the Public Analyst is not to be taken into consideration.

5. Mr. Mehta, learned advocate submitted that no doubt the accused No.4 is joined by the complainant at the initial stage and at the instance of accused No.4 the Court has forwarded the sample to the Central Food Laboratory for analysis. However, during the trial, it has clearly transpired that the accused No.4 has not manufactured the samples collected from the Vendor and forwarded to the Public Analyst and Central Food Laboratory. For this purpose, learned Advocate Mr. Mehta relied on panchnama at Exh.29 which clearly reveals that the manufacturer is Lucky Canning Company. It also transpires that the vendor could not produce bill at the time when the Food Inspector collected the samples as he did not receive it, but later on he received it by post, which he has produced on the record of the case, at Exh.56. From the bill and label on the containers, it clearly appears that the manufacturer is Lucky Canning Company, whose address is mentioned in the bill as 13/143 Old Padi Mohalla, Athwa Lines, Surat. Mr. Mehta submitted that the Food Inspector has also been questioned in this behalf. He has admitted that Lucky Trading Company is joined as accused No.4 at the instance of the Vendor. He has admitted that bill Exh. 56 is of Lucky Canning Company. He has also admitted that in the panchnama, name of Lucky Canning Company is mentioned and the name of Lucky Trading Company is nowhere mentioned. Mr. Patel, learned APP on the other hand submitted that

this bill was not produced by the Vendor when the Food Inspector visited the shop and he has given the name of Lucky Trading Company as a manufacturer. According to him, as the bill is produced after launching the prosecution, the same should not be accepted. This contention cannot be accepted because it is the prosecution case from the beginning that the manufacturer is Lucky Canning Company. The label affixed on the bottles disclosed the name of Lucky Canning Company and the same name is also mentioned in the panchanam. In view of Rule 12.A of the Rules, label itself is a warranty. Merely because accused No.4 has been joined as an accused at the instance of co-accused (vendor) and the accused No.4 has given an application for forwarding one of the the samples to the Central Food Laboratory, it cannot be said that both the Companies are the same, as later on suggested by the learned APP.

6. So far as sanction is concerned, Mr. Mehta pointed out that the sanction is without application of mind in the instant case. Though at the relevant time the documents, namely the Panchnama, disclosed the name of Lucky Canning Company as the manufacturer, the prosecution has not explained as to how sanction is granted to prosecute Lucky Trading Company, accused No.4. In the forwarding letter to the Local Authority for obtaining consent, report is submitted, vide Exh.35. Along with the report, the Food Inspector has forwarded the panchnama, report of Public Analyst and other relevant papers, for obtaining consent; However, for seeking consent, the name is mentioned as Lucky Trading Company, though Panchnama, which is the first document, contains the name of Lucky Canning Company as the manufacturer. That being so, how the Food Inspector has sought consent to prosecute Lucky Trading Company? The same is not explained by the prosecution. It is clear that the sanctioning authority has not applied its mind while according consent to prosecute accused No.4.

7. Suffice it to say that in the instant case, on behalf of vendor, bill has been produced which has been issued by Lucky Canning Company, and the same name being printed on the label, is referred in the panchanama with other relevant details. The bill is required to be considered as a warranty in view of deeming fiction in proviso to section 14 of the Act. The bottles sold to Food Inspector were supplied by the manufacturer to the vendor in conformity with Rule 12.A of the Rules, i.e. bottles were supplied with the label having a warranty. Mr. Mehta, learned advocate submitted that in the instant case, as warranty, i.e. bill and label reveals

that the accused No.4 is not the manufacturer of the article of food in question, and, therefore, order of acquittal passed in favour of accused No.4 requires to be confirmed.

8. In view of the fact that the samples have been collected in accordance with the rules and the same is found to be adulterated in view of the report of Central Food Laboratory, it is clear that the Vendor was dealing in an article of food which was adulterated. Section 19 of the Act refers to defences which may or may not be allowed in prosecutions under this Act. Sub-section (2) of Section 19 of the Act is relevant in the instant case, which reads as under:-

19. (2). A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves -

(a). that he purchased the article of food -

(i). in a case where a licence is prescribed for the sale thereof, from a duly licenced manufacturer, distributor or dealer;

(ii). in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b). that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

In the instant case, it is the case of the prosecution that sealed bottles were taken as samples and one sample was forwarded to the Public Analyst for analysis and the other sample was forwarded to Central Food Laboratory in accordance with law at the instance of accused No.4. In the instant case, evidence on record reveals that the Food Inspector collected samples for analysis from a vendor who purchased the same from a manufacturer with a warranty within the meaning of section 14 of the Act and rule 12.A of the Rules and has stored it properly and has sold the article of food in the same state as he purchased it. Therefore, in view of section 19 of the Act, vendor shall not be deemed to have committed an offence pertaining to sale of adulterated food to the Food Inspector. Thus, vendor cannot be held

guilty of an offence for which he was charged.

9. When Exh. 56 bill issued by Lucky Canning Company was produced on the record, it was the duty of the complainant to give an application to the trial Court to implead the manufacturer as an accused under section 20.A of the Act. When panchnama and later on the bill Exh. 56 were produced on the record, all concerned were made aware that the manufacturer is Lucky Canning Company and not Lucky Trading Company. It was the duty of the trial Court, when evidence was produced before it, to examine this aspect in view of section 20.A of the Act, which reads as under:-

20.A Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then the court may, notwithstanding anything contained in sub-section (3) of section 319 of the Code of Criminal Procedure, 1973 (2 of 1974), or in Section 20, proceed against him as though a prosecution had been instituted against him under Section 20.

In the instant case, before the trial Court on production of the panchnama and on completion of the cross-examination of the complainant, it was made clear that the manufacturer is Lucky Canning Company and not Lucky Trading Company. It was made emphatically clear by the Vendor on production of a bill that the manufacturer is Lucky Canning Company and not Lucky Trading Company. It was the duty of the trial Court, on perusal of the panchnama as well as the bill Exh. 56, to implead the manufacturer as an accused during the trial. Reading Section 20.A it appears that it is left to the discretion of the trial Court to implead the manufacturer, distributor or dealer. One has to bear in mind that the Act is enacted with a view to see that health of public is not adversely affected. Offences under the Act are anti-social crimes affecting the health and well being of our people, hence a more drastic step was taken by the legislature in prescribing a minimum sentence and a minimum fine to be imposed even for a first offence. Adulteration of food is so dangerous and wide spread and has often led to large human tragedies, sudden or slow, insidious or open, that social defence of casting of absolute liability on the criminal even if particular

offence is committed with an unsuspecting means. Parliament by Act No. 49 of 1964 inserted section 20.A of the Act empowering trial Court to implead manufacturer, distributor or dealer. When the power is conferred by the statute and evidence on record indicates that such manufacturer is also concerned with the offence, the discretion ought to have been exercised to implead the manufacturer. The trial Court has lost sight the purpose for which the Act is enacted prescribing penalty and taking away the discretion of the Court while sentencing the accused.

10. Under the circumstances, it is required to be held that the vendors-accused No. 1, 2 and 3 cannot be convicted as sufficient evidence is placed on record to establish the defence of warranty, and hence accused No. 1, 2 and 3 must get benefit of section 19 of the Act in the instant case. Accused No. 4, who is not the manufacturer of the adulterated food, cannot be held guilty in the instant case.

In the circumstances, this appeal fails and stands dismissed.

csm./ -----